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PATENTS  
CF-36

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Mark Colaio

Application No.: 10/015,739 Confirmation No.: 8873

Filed : December 12, 2001

For : METHOD AND SYSTEM FOR TRAINING TRADERS

Group Art Unit : 2123

Examiner : Not yet assigned

Box MISSING PARTS  
Commissioner for Patents  
P.O. Box 2327  
Arlington, Virginia 22202

PETITION FOR FILING WHEN AN  
INVENTOR'S LEGAL REPRESENTATIVE REFUSES TO SIGN  
PURSUANT TO 37 C.F.R. § 1.47

The signature of the inventor for which a patent is sought on the above-identified invention has not been secured.

The inventor whose signature has not been secured was present at the World Trade Center, Tower 1, on September 11, 2001. Because of the attack on the World Trade Center, that inventor is missing and presumed dead, and his legal representative (his wife) has been identified.

A diligent effort has been made to secure the signature of the legal representative of the deceased inventor. As proof, attached is a file copy of a January 16, 2002 letter from the undersigned to the legal representative that was sent by Federal Express along with a Declaration and Power Of Attorney in connection with this patent application.

The legal representative of the deceased failed to execute and

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return the Declaration and Power of Attorney on behalf of the deceased inventor in this case. Furthermore, limited telephone contact occurred between the undersigned and the father of the deceased on behalf of the legal representative. This telephone contact was not successful in securing the signature of the legal representative.

Accordingly, applicant files herewith a Declaration and Power of Attorney signed by a person to whom the deceased inventor has assigned or agreed in writing to assign the invention under 37 C.F.R. § 1.47(b). As a condition of his employment with eSpeed, Inc., a subsidiary of Cantor Fitzgerald, L.P., a company existing under the laws of the State of Delaware, the deceased inventor had agreed in writing to sign all required documents to transfer ownership to Cantor Fitzgerald of the inventions he invented while working for Cantor Fitzgerald.\*

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\* The employment agreement states in pertinent part, "Cantor Fitzgerald owns all the tangible and intangible work product originated or developed by employees in connection with their employment, even if developed outside the Firm's premises. As a condition of your employment you agree that Cantor Fitzgerald shall have exclusive ownership of any and all right, title, and interest in (1) all copyright, trademarks, service mark rights, patents or processes associated with any work, mark, invention or process produced during the course of your employment which was originated or developed in connection with such employment; and (2) any such proprietary rights with respect to any invention or process originated or such proprietary rights with respect to any invention or process originated or developed in connection with your employment reduced to practice following the termination of your employment, if the invention or process existed in an intangible form prior to such termination, even if it was not workable at that time."

Should the legal representative subsequently execute the Declaration and Power of Attorney, her executed Declaration and Power of Attorney will be forwarded to the U.S. Patent and Trademark Office.

Respectfully submitted,

*Joel Weiss*

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Frederick P. Fish 1855-1930 Charles Neave 1867-1937

\*California and New York Bars \*\*California Bar Only

**JOEL WEISS**

DIRECT DIAL 212.596.9222

January 16, 2002

**BY FEDERAL EXPRESS**

Ms. June Colaio  
 260 Braodway  
 Apt. 36  
 New York, NY 10013

Re: Application No. CF/36

Dear Ms. Colaio:

As you may be aware, we are outside patent attorneys for Cantor Fitzgerald and represent Cantor Fitzgerald on numerous patent matters, including obtaining a patent on an invention that your husband made while he was employed by Cantor Fitzgerald. We need your assistance with respect to obtaining a patent on this invention.

First, please accept our sincere condolences on the loss of your husband. We greatly enjoyed meeting and working with him. Please accept our apologies for troubling you with these matters at this time.

As you may be aware, Mark had been working on a patent application on behalf of Cantor Fitzgerald. Certain formalities -- i.e., signing of the required documentation -- for many of this application still remain to be completed. Application for the patent may be executed by the legal representatives of the inventor. Accordingly, we need to have two

Ms. June Colaio  
January 16 2002  
Page 2

documents signed by Mark's legal representative (executor, administrator, heir or heirs, etc.) for his patent application. We also need assurance by the legal representative of his or her power or authority.

The two documents that we need to have signed are enclosed and are as follows:

1. Declaration and Power of Attorney for Patent Application (attached to the back of the enclosed copy of the relevant patent application); and
2. Assignment of rights to eSpeed, Inc. (an affiliate of Cantor Fitzgerald)

The first document declares that Mark was the sole inventor that invented the subject matter in the patent application. The first document also gives our firm Power of Attorney to prosecute the application before the United States Patent and Trademark Office.

The second document assigns rights in the patent application to eSpeed, Inc. Mark was legally obligated by his employment agreement\* to sign all required documents to transfer ownership to Cantor Fitzgerald of the inventions that he invented while working for Cantor Fitzgerald (for internal corporate reasons, we request that you assign the invention to eSpeed, Inc.)

If you have any questions concerning these documents, or would simply like a broader explanation of the import of these documents, please feel free to call me or to consult other counsel.

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\* The employment agreement states in pertinent part, "Cantor Fitzgerald owns all the tangible and intangible work product originated or developed by employees in connection with their employment, even if developed outside the Firm's premises. As a condition of your employment you agree that Cantor Fitzgerald shall have exclusive ownership of any and all right, title, and interest in (1) all copyright, trademarks, service mark rights, patents or processes associated with any work, mark, invention or process produced during the course of your employment which was originated or developed in connection with such employment; and (2) any such proprietary rights with respect to any invention or process originated or such proprietary rights with respect to any invention or process originated or developed in connection with your employment reduced to practice following the termination of your employment, if the invention or process existed in an intangible form prior to such termination, even if it was not workable at that time.

As further condition of your employment, you agree to execute any and all documents necessary to protect and preserve Cantor Fitzgerald's proprietary rights in copyrights, trademarks, service marks, patents, processes and trade secrets even if you are no longer employed by the Firm and including at Cantor Fitzgerald's request, you agree to confirm such assignment in writing. . . ."

Ms. June Colaio  
January 16 2002  
Page 3

We have assumed that you are your husband's legal representative. If so, please complete the enclosed two documents and return them to me in the enclosed self-addressed, postage-paid, return envelope. We will consider our receipt of the signed documents from you as your assurance to us that you are the legal representative.

If you are not your husband's legal representative, please tell me how to contact that person so that we can get him or her to sign the enclosed documents.

Again, if you have any questions, please call me. If you would prefer to speak to someone at Cantor Fitzgerald about this, I suggest Mr. Howard H. Lutnick, tel.: (212) 821-6968.

We are required by law to make a diligent effort to secure your participation in completing these applications prior to proceeding without your participation.

If we do not hear from you in two weeks time from the date of this letter, we will try to contact you again. If, after we try to contact you a second time, we do not hear from you, we will assume that you do not wish to participate. Similarly, you may choose to inform us that you do not wish to participate. In either case, we will proceed with the application process on behalf of Cantor Fitzgerald without the signed documents.

I greatly appreciate your help and I look forward to hearing from you.

We may be sending you more of these documents for signing in the future. Please forgive this inconvenience but it is not possible to forward all the documents to you at this time because the applications are at different stages of completion.

Sincerely yours,

Joel Weiss

JW:jw  
Enclosures

cc: Steven Merkel, Esq. (w/o enc.)